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No. 2655.

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IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT.

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COLLIN MURRAY,

Appellant,

vs.

SIOUX-ALASKA MINING COMPANY, a Corporation, H.  
M. SMITH, HASTINGS CREEK DREDGING CO., a  
Corporation, and JOSEPH BELLEVIEW,

Appellees.

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BRIEF FOR APPELLEES SIOUX-ALASKA  
MINING COMPANY AND JOSEPH  
BELLEVIEW.

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G. J. LOMEN,

Attorney for Appellees Sioux-Alaska Mining Co.  
and Joseph Belleview.

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Filed this.....day of September, 1916.

**Filed**

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**F. D. Monckton**

Clerk.

Clerk

By.....Deputy Clerk.

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COLLIN MURRAY,

*Appellant,*

vs.

SIOUX-ALASKA MINING COM-  
PANY, a corporation, H. M. SMITH,  
HASTINGS CREEK DREDGING  
CO., a corporation, and JOSEPH  
BELLEVIEW,

*Appellees.*

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BRIEF FOR APPELLEES, SIOUX-ALASKA MINING  
COMPANY AND JOSEPH BELLEVIEW.

ARGUMENT.

Appellant asserts that his complaint is a creditor's bill. He appears to be a simple, contract creditor. He alleges no lien or trust. He seeks to enjoin the appellee, Belleview, alleged to be a debtor of the defendant Smith, a non-resident debtor of the appellee Sioux-Alaska Mining Company, an alleged debtor of the appellant, from paying his legal debts to said Smith. There is no pretense that Belleview is not a bona fide purchaser for value. In effect the action is

brought, not to cancel the agreement of purchase between Smith and Belleview, but, ratifying same, to follow the proceeds of the property sold to Belleview. Without a lien or trust in favor of appellant being shown, this cannot be done, even were the action against Smith, and, with or without a lien or trust, the action does not lie against the appellee Belleview, an innocent purchaser for value.

In the federal courts a creditor's bill does not lie until judgment at law against the principal debtor has been obtained and an execution returned *nulla bona*.

*Scott v. Nealy*, 140 U. S., 106; 11 S. Ct., 712;  
*Cates v. Allan*, 149 U. S., 451; 13 S. Ct., 883;  
*Hollins v. Brierfield Coal & Iron Co.*, 150 U.  
 S., 371; 14 S. Ct., 127.

The federal rule must be followed in this case. The only federal cases cited by appellant are *Madden v. McKenzie*, 114 Fed., 65, which is not in point; *Tally v. Curtain*, 55 Fed., 44, where complainants had an interest in the property under a deed and the trustee was in court; and *Consolidated T. & L. Co. v. Kansas City*, 45 Fed., 16, where a creditor's bill was filed to set aside a deed of trust, and where the necessary parties were in court.

Nowhere can a case be found where the court has enjoined a *debtor* of a *debtor* of a *debtor* from paying his legal obligation.

12 Cyc., 28, note 35;

*Jones v. Huntington*, 9 Mo., 249.

Especially must this be so where the court has no jurisdiction of the second debtor. There is a *missing link*.

This action was not brought on behalf of appellant and *other creditors*. This was also fatal to the bill.

*Pullman v. Stebbins*, 51 Fed., 10.

If appellant should prevail in this action we can well see how the appellee Bellevue might lose the benefit of his bargain however innocent he might be. He at least comes into court with "clean hands." Appellant facetiously claims that the appellee Sioux-Alaska Mining Company does not come into court with "clean hands." Said company did not come into court voluntarily, but was brought into court *by appellant*. We observe in passing, that said company has been *adjudicated a bankrupt* in the United States District Court, at Sioux Falls, South Dakota.

Respectfully submitted.

G. J. LOMEN,  
Attorney for Appellees Sioux-Alaska Mining  
Co. and Joseph Bellevue.

